

PUBLIC MEETING MINUTES

February 14, 2013

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:05 a.m.

Members Present

Anita I. Martinez, Chair
A. Eugene Huguenin, Member
Priscilla S. Winslow, Member
Eric R. Banks, Member (Excused)

Staff Present

Suzanne Murphy, General Counsel
Les Chisholm, Division Chief, Office of General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer
Annie Song-Hill, Interim Supervising Conciliator, State Mediation and Conciliation Service

Call to Order

After establishing that a quorum had been reached, Chair Martinez called the meeting to order for a return to the open session of the December 13, 2012 Public Meeting. She reported that the Board met in continuous closed session to deliberate the pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in December. Those were PERB Decision Nos. 2298-M, 2299, 2300-H, 2301-C, 2302-H, 2303, 2304, and 2305-S. The following Request for Injunctive Relief (IR Request) was filed and pending before the Board: No. 630 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*). Chair Martinez announced that a document containing a listing of the aforementioned decisions was made available at the meeting, and that the decisions were available on PERB's website.

Motion: Motion by Member Huguenin and seconded by Member Winslow, to close the December 13, 2012 Public Meeting.

Ayes: Martinez, Huguenin and Winslow.

Motion Adopted – 3 to 0.

Chair Martinez adjourned the December 13, 2012 Public Meeting. She then opened and called to order the February 14, 2013 Public Meeting.

Minutes

Motion: Motion by Member Winslow and seconded by Member Huguenin, that the Board adopt the minutes for the December 13, 2012 Public Meeting.

Ayes: Martinez, Huguenin and Winslow.

Motion Adopted – 3 to 0.

Comments From Public Participants

Greg Eddy, Field Representative, California Federation of Teachers, appeared to formally introduce himself to PERB's newly appointed Board Members Winslow and Banks. Mr. Eddy stated that CFA was "extremely pleased with the new appointments on the Board" and the fact that PERB now has a four-Member Board.

Romero Maratea, Liaison, California Teachers Association (CTA), appeared before the Board stating that he is a teacher from Escondido, North County San Diego, and President of his CTA local, and also wanted to introduce himself to Board Members Winslow and Banks. He stated that he had recently replaced Kevin Colburn, who was the former CTA representative who attended PERB Public Meetings. Mr. Maratea spoke briefly about his extensive bargaining experience at the CTA local level, welcomed the newly appointed Board Members, and invited them to contact him "if you have any need for my perspective, from either my local level or CTA level."

Member Huguenin presented former PERB Board Member Alice Dowdin-Calvillo with a Resolution from the Senate of the State of California. The Resolution adopted by the Senate honors former Board Member Dowdin-Calvillo for her service at PERB, and her prior and continuing public service. Former Member Dowdin-Calvillo expressed her appreciation and thanked everyone for the tribute.

Staff Reports

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

a. Administrative Report

Chief Administrative Officer Eileen Potter reported that the tenant improvements in the Headquarters Office in Sacramento were almost complete. The lease for the Regional Office in Oakland has been executed and the tenant improvements in that office are scheduled to begin May 1. Ms. Potter stated that she is waiting for a construction schedule for the

additional hearing room from the building manager and had been assured that the improvements should not be disruptive to staff. She stated that there was nothing to report with regard to PERB's budget.

b. Legal Reports

Suzanne Murphy, General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Murphy provided the following information about activity since the Board's last Public Meeting in December: With respect to unfair practice charges during the months of December 2012 and January 2013, 166 new cases were filed with the General Counsel's (GC) Office (down by 17 over the prior two-month period due to sharp decreases in representation petitions—from 23 to 9, and factfinding requests—from 33 to 8). Ms. Murphy reported that the number of unfair practice charges filed in the current fiscal year was down to an average of 52 per month as compared to an average of 64 per month in the prior fiscal year. During the same above-mentioned two-month period, 154 case investigations were completed (down by 40 over the prior two-month period, yielding a net increase in the GC Office's backlog of pending cases), and a total of 38 days of informal settlement conferences were conducted by the GC staff.

As mentioned by Chair Martinez, since the last Public Meeting in December, one IR Request was filed and remained pending before the Board: IR Request No. 630 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*).

In terms of litigation relating to PERB since the Public Meeting in December, four new litigation matters were filed.

1. *San Diego Housing Commission v. Public Employment Relations Board*, filed in San Diego Superior Court on December 14, 2012. The issue in this case is whether PERB erred in interpreting the new Meyers-Milias-Brown Act (MMBA) factfinding procedures created by Assembly Bill 646 as being applicable to an impasse in the party's negotiations over the impact and effects of a layoff. PERB's demurrer to the Commission's petition for writ of mandate was set for February 1, but was continued to March 1.
2. *City of Long Beach v. Public Employment Relations Board*, filed in the California Court of Appeal, Second District, Los Angeles, on January 4, 2013. The issue in this case is whether PERB erred in Decision No. 2296-M by holding that the City violated the MMBA by unilaterally implementing a five-day furlough for employees represented by the machinists, who are the real parties in this case.
3. *Regents of the University of California v. Public Employment Relations Board*, filed in the California Court of Appeal, First District, San Francisco on January 18, 2013. The issue in this case is whether PERB erred in Decision No. 2300-H by holding that the Regents violated the Higher Education Employer-Employee Relations Act (HEERA) when it unilaterally changed the rules regarding leafleting activities of the American Federation of State, County and Municipal Employees Local 3299 on

sidewalks adjacent to entrances to the acute care hospital at the University of California, San Francisco.

4. *Glendale City Employees v. Public Employment Relations Board*, Notice of Appeal filed on February 7, 2013. This case is an appeal from the Superior Court writ litigation that began in June 2012 involving PERB Decision No. 2251-M, in which the Board affirmed a Regional Attorney's dismissal of the Glendale City Employees Association surface bargaining charge.

Regarding case determinations since the last Public Meeting, PERB received no final court rulings.

As a matter of interest and for public information, Ms. Murphy informed the Board that on January 30, 2013, Deputy General Counsel Wendi Ross and she appeared on behalf of PERB at a Joint Orientation Hearing for new and continuing members of the Senate Public Employment and Retirement Committee, and the Assembly Committee on Public Employees Retirement and Social Security. Copies of the written presentation submitted at that hearing were made available at the Public Meeting.

Chief ALJ Shawn Cloughesy reported on the activities of the Division of Administrative Law and stated that the ALJ report had been distributed to the Board for its review. Mr. Cloughesy reported that formal hearings are currently being set three months from the date of informal settlement conferences. He stated that there has been a 61 percent increase in proposed decisions issued from last year (that year was the highest in a 20-year period) and that the ratio for exceptions to proposed decisions was 31 percent (average is 40 percent). Regarding formal hearing dates, Mr. Cloughesy informed the Board that a couple of ALJs would be relieved from presiding over formal hearings to focus on the backlog in proposed decision writing. As a result, he anticipated that for a period of time, the setting of formal hearing dates would be pushed out four to five months from the date of informal.

In answer to Chair Martinez's question, Mr. Cloughesy stated that he anticipated the four- to five-month delay in setting hearing dates to occur certainly in PERB's Glendale Regional Office with its heavy workload climate, and possibly Oakland where PERB houses only one ALJ.

c. State Mediation and Conciliation Service (SMCS) Report

On behalf of SMCS, Interim Supervising Conciliator Annie Song-Hill provided the Board with SMCS's report for the months of December and January. Comparing those months, Ms. Song-Hill reported that SMCS was down 38 cases in terms of total cases opened. Specifically, she reported that SMCS was down two cases for contract impasses, up 26 in terms of grievances, down four in elections, and stated that the work of SMCS is very episodic and, at this point, it was difficult to see trends.

As a good thing, Ms. Song-Hill reported that the SMCS transfer from the Department of Industrial Relations to PERB represented a significant change in terms of expectations in the way SMCS conducts business. Since 1947 until July of last year, SMCS had operated

and was under a culture that was much different from PERB. SMCS is now in the process of setting up a system to meld the PERB and SMCS cultures together. Part of this has to do with the fact that SMCS has never had a case management system which provides information and reporting such as has been needed since joining PERB. Throughout the Public Meeting there was extensive discussion and various comments by Board Members and staff alike regarding the set-up of reports and the information that would be generated by SMCS through PERB's case management system.

Ms. Song-Hill reported that the University of California and the American Federation of State, County and Municipal Employees (AFSCME) declared impasse in a unit covering approximately 13,000 employees. SMCS had two mediators working over five sessions and the case has been referred to factfinding. Responding to Chair Martinez's question, Ms. Song-Hill stated that this case involved patient care.

Ms. Song-Hill stated that she had spoken with the legal representative for the unions, Leonard Carder, at the Bay Area Rapid Transit District and that their contract would be expiring in June. It is anticipated that SMCS services will be called upon to assist the parties in their contract negotiations.

d. Legislative/Rulemaking Report

Les Chisholm, Division Chief, Office of the General Counsel, stated that there was nothing to report regarding legislation, and that February 22 was the final day for the introduction of new bills for this session. He stated that staff would continue to monitor legislation introduced and flag anything that is of interest to the agency.

With respect to rulemaking, Mr. Chisholm stated that the two rulemaking packages approved by the Board in December (the transition package dealing with SMCS and its transition from DIR to PERB, and the general package covering a number of substantive changes) were submitted to the Office of Administrative Law (OAL) on February 1. OAL then had 30 workdays (mid-March) to review each of those packages. As of this date, PERB has had no feedback from OAL. If OAL review runs smoothly, the process would conclude in mid-March and the actual changes would then take effect 30 days following when OAL files the packages with the Secretary of State. PERB could then anticipate an effective date for the changes in those regulatory packages in approximately mid-April.

Mr. Chisholm reported on the Advisory Committee meeting recently held in PERB's Headquarters Office in Sacramento. At that meeting discussion was held, in a workshop fashion, regarding two areas of proposed change: (1) the conduct of elections by SMCS; and (2) consideration of a change with respect to the MMBA factfinding regulations adopted one year ago, allowing appeals of Board agent determinations under those cases to be brought to the Board itself. A second Advisory Committee meeting has been scheduled to address these same topics on February 28 in PERB's Glendale Regional Office. Mr. Chisholm stated that staff was still hopeful to have a proposed regulations package at the Public Meeting in April for the Board's consideration to submit to the formal rulemaking

process. An update in this regard would be provided after the February 28 Advisory Committee meeting in Glendale.

Reporting further on rulemaking, Mr. Chisholm added that there had been staff-level discussions, and also some discussion at the Advisory Committee meeting, regarding the timing of possible regulations with regard to the enactment last year of the new In-Home Supportive Services Employer-Employee Relations Act (IHSSA). He stated that nothing concrete has resulted from those discussions.

There was discussion held in answer to Chair Martinez's question regarding outreach to PERB constituents in Southern California for the Advisory Committee meeting to be held in Glendale. Ms. Murphy and Mr. Chisholm both responded in the affirmative providing details on outreach efforts by PERB staff.

Motion: Motion by Member Huguenin and seconded by Member Winslow that the Legal (including General Counsel and Chief Administrative Law Judge), Administrative, State Mediation and Conciliation Service, and Legislative Reports be accepted and filed.

Ayes: Martinez, Huguenin and Winslow.

Motion Adopted – 3 to 0.

Old Business

None.

New Business

Chair Martinez had the following two announcements:

- Advisory Committee Meeting — Save the date. A second Advisory Committee meeting is scheduled for Thursday, February 28, 2013, at 11 a.m., at PERB's Regional Office in Glendale. This meeting is scheduled to solicit opinions from PERB constituents regarding a regulatory package concerning elections conducted by SMCS.
- Public Meeting in April 2013. PERB's Public Meeting has been changed back to its original date, April 11. That Public Meeting date was changed to April 18 anticipating PERB staff submission of a regulatory package.

General Discussion

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through April 11, 2013, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these

closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

Motion: Motion by Member Huguenin and seconded by Member Winslow to recess the meeting to continuous closed session.

Ayes: Martinez, Huguenin and Winslow.

Motion Adopted – 3 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair